

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Jules Falcone

v.

Aqua Pennsylvania, Inc.

:  
:  
:  
:  
:  
:

C-20055300  
Z-01761777

RECEIVED  
2005 DEC 29 AM 9:28  
PENNSYLVANIA  
SECRETARY'S BUREAU

INTERIM ORDER

On May 19, 2005, Mr. Jules Falcone ("Complainant") filed a formal Complaint against Aqua Pennsylvania, Inc. ("Aqua" or "Company" or "Respondent") alleging that the Company billed him for residential water service prior to him occupying the property at 257 Highland Avenue, Wayne, Pennsylvania 19087 ("Property"). Mr. Falcone requests that he not be required to pay for service he did not receive. This formal Complaint is Docket No. Z-01761777.

On August 29, 2005,<sup>1</sup> Aqua filed an Answer and New Matter regarding the formal Complaint at Docket No. Z-01761777. The Company stated that the Complainant's grandfather of the same name, Mr. Jules Falcone, previously lived at the Property with an account # 204840-204840 and the Company errantly had the Complainant responsible for the grandfather's outstanding balance on this account. The Complainant notified the Company that his grandfather was deceased and that the Complainant was not responsible for the grandfather's outstanding balance. Although the Company requested documents evidencing the move of the Complainant to the Property, the Company never received any such documentation. However, the Company set up a new account #521315-204840 using a move-in date of July 1, 2004 and rendered an initial bill using the first actual read date of August 20, 2004. The Company provided a credit to Complainant's account reflecting the payments made for the grandfather's account.

DOCUMENT  
FILED

<sup>1</sup> Aqua received an extension of time to September 1, 2005 to file an Answer to Mr. Falcone's formal Complaint at Docket No. Z-01761777.

The Company stated that Complainant's bills have been estimated since June 20, 2005 due to the remote transmitting device not operating properly. Aqua has requested access to the Property to investigate this malfunction but has not received a response. Aqua stated that its recourse is to provide Complainant with an estimated bill until it can gain access to resolve this inoperability. By way of New Matter Aqua requested that the formal Complaint at Docket No. Z-01761777 be dismissed as moot.

On September 14, 2005, Mr. Falcone filed another formal Complaint against Aqua alleging overpayment of his water bill since August 2004. Mr. Falcone also alleged a ten-month sewage back-up problem and errant pipe connections by Aqua causing plumbing and property damage through March 2005 and questioning the safety, quality and reliability of Aqua's water service. Lastly, Mr. Falcone complained of receiving shut-off notices from Aqua at least once a week. Although Mr. Falcone had been told by an Aqua representative that they would make sure he didn't receive anymore of these notices, he continued to receive them. This formal Complaint is Docket No. C-20055300.

On September 23, 2005, Aqua filed a Motion to Consolidate ("Motion") the two formal Complaints filed by Mr. Falcone. Aqua stated that both of the complaints allege issues regarding the Company's water service to the Property and should be consolidated to afford the parties and the Commission administrative efficiency.

On December 13, 2005,<sup>2</sup> Aqua filed at Docket No. C-20055300 an Answer and New Matter. In the Company's Answer at Docket No. C-200553000, Aqua denied any reliability, safety or quality problem with its utility service and admitted that it issued shut-off notices because of the Complainant's refusal to provide access to the meter. The Company also admitted to receiving notice to Complainant's sanitary lateral line in May 2005. Aqua disclosed its belief that a

---

<sup>2</sup> Respondent requested an extension of time to December 14, 2005 to file an Answer to the complaint at Docket No. C-20055300 as the parties were mediating to come to some accord which was unsuccessful.

contractor damaged Radnor Township's sanitary trunk line, restored sewer service to the trunk line, but failed to reconnect Complainant's sewer lateral to the trunk line. Aqua stated that it paid Radnor Township \$8,554.00 through its contractor for work that was performed on the Property. Aqua averred that some of Complainant's bills for repairs may be comprised in the \$8,544.00 amount paid. Aqua stated that it repaired both its water main and Complainant's water service lateral line the same day it was damaged and contested that Mr. Falcone was without water for approximately thirty (30) days.

In New Matter the Company requested that the Commission order the Complainant to allow Aqua access to the Property to maintain or repair its equipment. Aqua averred that the Commission does not have jurisdiction over the awarding of monetary damages as requested by Complainant. Consequently, Aqua requested that part of Mr. Falcone's subject complaint addressing relief for monetary damages be dismissed with prejudice due to lack of authority by the Commission to grant said relief.

#### Motion to Consolidate

Aqua filed a New Matter requesting dismissal of that part of the complaint at Docket No. Motion to Consolidate the two formal Complaints. The Company stated that consolidation would result in administrative efficiency and both of the complaints regarded water service to the Property. Mr. Falcone did not respond to the Motion.

Pursuant to 52 Pa. Code § 5.81(a),

The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

The question of consolidation is left to the sound discretion of the Commission or the presiding officer.

In considering the consolidation of cases, the first criterion is that the proceedings must involve "a common question of law or fact." 52 Pa. Code § 5.81(a). Commission precedent establishes that considerations in addition to presence of common question of law or fact must also be evaluated in ruling on consolidation. *See for example, Applications of Philadelphia Electric Co.*, 43 PA PUC 781 (1968); *Pa. P.U.C. v. Bell Telephone Co. of Pennsylvania*, 46 PA PUC 568 (1973); *Pa. P.U.C. v. Butler Twp. Water Co.*, 52 PA PUC 442 (1978). These other considerations are:

1. Will the presence of additional issues cloud a determination of the common issues?
2. Do issues in one proceeding go to the heart of an issue in the other proceeding?
3. Will consolidation unduly protract the hearing, or produce a disorderly and unwieldy record?
4. Will different statutory and legal issue be involved?
5. Does the party with the burden of proof differ in the proceedings?
6. Will consolidation result in reduced costs of litigation and decision-making for the parties and the Commission?
7. Will consolidation unduly delay the resolution of one of the proceedings?
8. Will supporting data in both proceedings be repetitive?

No single consideration, or group of these considerations, is dispositive of a consolidation, any more so than the presence of a common question of law or fact. Rather, the evaluation is of all of them and a balancing of those favoring and disfavoring consolidation is required.

The question of law is whether Mr. Falcone received unreasonable water service from Aqua through incorrect billing and damage to plumbing and property from initiation of service through March 2005. Mr. Falcone would bear the burden of proof and if the allegations proved true the Company could be fined for unreasonable service.

The consolidation of the two proceedings will provide economy of administrative services by the Commission and efficiency by the parties. Mr. Falcone has the burden on proof in both complaints and the Company's litigation costs have the potential to be reduced. The Motion will be granted through the ordering paragraphs below.

## Motion to Dismiss

By way of New Matter filed on December 13, 2005, Aqua requested that that part of the relief requested by Complainant regarding an award of monetary damages and reimbursement of expenses be dismissed with prejudice. Aqua went further to state that the Commission does not have the authority to provide an award of monetary damages or reimburse expenses. Additionally, Aqua requested that the Complainant be ordered to provide the Company access to inside the Property in order to investigate why the remote is not transmitting the readings from the meter or otherwise operating properly.

According to 52 Pa. Code § 5.101(d), an answer to a preliminary motion may be filed within ten days of the request. Ten (10) days have elapsed since Aqua served its request which I am treating as a preliminary motion. Complainant, Mr. Falcone, has not filed a response to the request. This matter is ripe for review.

Commission regulations provide for the filing of a motion to dismiss. 52 Pa. Code § 5.101. Specifically the request to dismiss was made by Aqua and questions the jurisdiction of the Commission. Thus, the request meets the requirement of the Commission regulation under Section 5.101(a)(1). 52 Pa. Code § 5.101(a)(1).

When considering a motion to dismiss, the Commission must view the complaint in a light most favorable to the Complainant. The complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18 1994).

In deciding whether to grant a motion to dismiss, the Commission must assume that the facts alleged in the complaint are true. Marinoff v. Bell Telephone of Pennsylvania, 75 Pa. PUC 489, 491 (1991).

The subject matter of the Complaint is whether Aqua provided safe, reliable and quality water service. However that portion of the Complaint sought to be dismissed is whether Mr. Falcone can be reimbursed for damages suffered to his property and plumbing.

The Commission has those powers conferred statutorily by the Legislature. 66 Pa. C.S. § 501 *et seq.* The Commission lacks the authority to award damages in a dispute. *Elkin v. Bell Tel. Co. of Pennsylvania*, 420 A.2d 371, 375, 491 Pa. 123 (1980). Thus, Mr. Falcone's request for compensation for plumbing expenses and damage to property cannot be addressed through this adjudication. The proper body to hear that portion of the dispute is the Court of Common Pleas. Additionally, the Commission cannot award compensation to Mr. Falcone for allegedly being without water for a month. However, if Mr. Falcone sustains his burden to prove that he was without water for a month, then said fact would go toward establishing inadequate service by Aqua for which the Company may be fined.

Aqua has requested that Mr. Falcone be ordered to provide the Company access to the Property so that the Company may investigate the inoperability of the meter to transmit a reading. Mr. Falcone is ordered to provide to the Company in writing three (3) dates with corresponding times when he can provide access to the Company to his meter on the Property. If Mr. Falcone has not provided this information prior to the scheduled hearing date of January 30, 2006, the Company may provide tariff or other appropriate evidence to show that such action denying access to the meter on the Property justifies the customer being shut-off.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Consolidate filed by Aqua Pennsylvania, Inc. to combine the formal Complaints of Jules Falcone v. Aqua Pennsylvania, Inc. at Docket Nos. C-20055300 and Z-01761777 is granted.

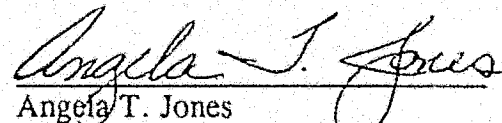
2. That the request to dismiss that portion of the complaint at Docket No. C-20055300 regarding Complainant's request to award compensation for property and plumbing expenses and compensation for lack of water service for a month is granted consistent with this Order.

3. That Mr. Falcone provides in writing to Aqua Pennsylvania, Inc. three (3) dates with corresponding times when Aqua would have access to his property at 257 Highland Avenue, Wayne, Pennsylvania 19087, consistent with this Order. The mailing address for this information to Aqua is:

Ms. Frances P. Orth, Esquire  
Aqua Pennsylvania, Inc.  
762 W. Lancaster Avenue  
Bryn Mawr, PA 19010  
610-645-1126

4. That this adjudication will proceed as scheduled.

Date: December 27, 2005

  
Angela T. Jones  
Administrative Law Judge